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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,499	07/07/2005	Hisakazu Hojo	050412	2008
23850	7590	04/06/2009	EXAMINER	
KRATZ, QUINTOS & HANSON, LLP 1420 K Street, N.W. Suite 400 WASHINGTON, DC 20005				BEKKER, KELLY JO
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
04/06/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/541,499	HOJO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kelly Bekker	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 December 2008.
- 2a) This action is **FINAL**.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

**DETAILED ACTION**

Amendments made 12/15/08 have been entered.  
Claims 1- 12 remain pending.

***Claim Rejections - 35 USC § 112 2<sup>nd</sup> Paragraph***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The 112 2<sup>nd</sup> paragraph rejections of claims 1-12 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, specifically for the recitation of “hardly soluble”, “condenses phosphates”, “HLB”, “the food additive composition of claim 1 or 2, wherein a calcium ion concentration (mg/l) satisfies the following requirement (a): (a) 0 greater than or equal to M greater than or equal to 10, wherein M is calcium ion concentration (mg/l) of a food additive composition obtained by adjusting a solid matter concentration of calcium to 10% by weight after pulverization and/or dispersion”, “wherein the food is a portion for coffee or black tea” and “wherein an ingredient of the portion for coffee or black tea is derived from vegetables” have been withdrawn in light of applicant’s amendments made December 15, 2008. The following 112 2<sup>nd</sup> paragraph rejections of claims 2-12 remain pending.

Claims 2-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites, “wherein a content of said component (B) is not less than 20% by weight of the total amount of the components (B) and (D)”. It is unclear as to what “a content of said component (B)” is. It is unclear as to if the “content of the B component” is the entire component B or some portion of component B.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hojo et al. (US 6254905 B1) in view of the combination of Grossman (About.com, "Facts About Iron" pages 1-5 <http://ibdcrohns.about.com/cs/nutrition/a/fdairon.html>) and Klahorst ("Calcium, An Important Nutrient" pages 1-5 [http://www.ifanca.org/newsletter/2001\\_05.htm](http://www.ifanca.org/newsletter/2001_05.htm)). The references and rejection are incorporated herein and as cited in the office action mailed August 15, 2008.

### ***Response to Arguments***

Applicant's arguments filed December 15, 2008 have been fully considered but they are not persuasive.

Applicant argues that although Hojo teaches of including the chelating agent, ferrous gluconate, Hojo does not require such, does not include it in the examples, and thus does not teach of the instantly claimed invention which requires a chelating agent, including gluconates. Applicant's argument is not convincing as Hojo teaches of including the chelating agent, ferrous gluconate, in the food additive composition, such as instantly claimed (Column 11 lines 4-8). The fact that the chelating agent is not required or that it is not included in the examples does not limit the teachings of the reference. Exemplarily embodiments and preferred teachings do not limit the teachings of a reference.

Applicant argues that Hojo teaches the ferrous gluconate as a nutritional supplement and not a chelating agent and thus the reference does not teach of a chelating agent as instantly claimed. Applicant's argument is not convincing as (a) the claims recite a food additive composition with the chelating agent gluconate and the references of record teach of the instantly claimed food additive composition; (b) since the references of record teach of the same chelating agent as instantly claimed, the ferrous gluconate as taught by Hojo would inherently function the same as the gluconate chelating agent instantly claimed; and (c) applicant has provided no evidence of unexpected results.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, applicant's argument that there is no motivation to combine the teachings of Grossman and Hojo is not convincing as motivation was found in some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. Specifically, Hojo et al. (Hojo) teaches of a food additive composition which contains iron in the form of ferrous gluconate which is a chelating agent and calcium (Column 11 lines 4-8), however is silent to the amount of the ferrous gluconate in the additive composition; Grossman teaches that the recommended daily amount of iron in 2001 for males ranged from 8-11mg per day and for females 8-18 mg per day (page 3); Klahorst, page 2, teaches that the recommended daily amount of calcium in 2001 was 1000-1300 mg per day; It would have been obvious by the knowledge generally available to one of ordinary skill in the art to include an amount of the ferrous gluconate or chelating agent in the additive composition depending on the amount of iron desired in the final composition and to include an amount of iron to calcium in the nutritional additive composition based upon the recommended daily amounts of iron and calcium, so that the nutritional additive would fulfill the requirements for both minerals simultaneously; thus as the RDA of calcium: iron was 1300:8 or 100:0.6 to 1000:18 or 100:1.8 as taught by Grossman and Klahorst,

one would have been motivated to include 0.6-1.8 parts of ferrous gluconate, i.e. an iron source per 100 parts of calcium carbonate, i.e. a calcium source.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Bekker whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/

/Kelly Bekker/

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Primary Examiner  
Art Unit 1794

Examiner  
Art Unit 1794